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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,450	04/17/2002	Jurgen Schonlau	AP9658	7780

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EXAMINER

MCANULTY, TIMOTHY P

ART UNIT PAPER NUMBER

3682

DATE MAILED: 07/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/018,450

Applicant(s)

SCHONLAU ET AL.

Examiner

Timothy P McAnulty

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-32 is/are pending in the application.
- 4a) Of the above claim(s) 24-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Species I in Paper No. 7, filed 15 May 2003 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 24-32 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7, filed 15 May 2003.

Claim Objections

3. Claim 16 is objected to because of the following informalities: the term "foot" in line 6 of claim 1 should be deleted. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 16-23 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Regarding claim 16, it is unclear as to which direction is opposite a "direction of actuation" since there is no reference set within the claim to ascertain the "direction of actuation". The claim is unclear as to which direction the generator points into the vehicle interior.

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b. Regarding claim 17, it is unclear as to how the pedal lever deviates a force "which does not act in the direction of actuation" when the pedal level includes both of the two legs. See line 6 of claim 16.

c. Regarding claim 22, the term CAN protocol is unclear. An abbreviation should not be used without prior term definition within the claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 16-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 197 06 692 in view of Rixon et al.

DE 197 06 692 discloses in figure 2, a vehicle pedal system comprising a pedal stand 7; a base member 11; a housing for a hydraulic or electromechanical generator 18 that points into a vehicle interior; a pedal lever pivotally connected to said base having a first leg and a second leg wherein a force applied to said first leg in a first direction causes actuation of said second leg in a second direction opposite said first direction, said second leg operatively acting on said generator. DE 197 06 692 does not disclose said base member pivotally connected to said pedal stand and being fixable by means of an adjustment device. However, Rixon et al. teaches in figures 1,2 and 8, an adjustable pedal system for a vehicle comprising a pedal stand 22; an adjustable base member 14 pivotally connected to said stand; a treaded spindle and nut adjustment device 48; a memory module; and a pedal lever operatively connected to said base

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member. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of DE 197 06 692 in view of Rixon et al. to provide pivotally connect said base member to said pedal stand so as to provide an adjustable pedal system to accommodate vehicle operators of different anatomical dimensions.

Regarding claim 18, there is reason to believe, based on the similarity of material and structure, that the functional limitations of said pedal lever initiating brake actuation independent of the driver in the case of a vehicle deformation may be an inherent characteristic of the reference combination set forth above. [W]here the Patent Office has reason to believe that a functional limitation asserted to be critical for establishing novelty in the claimed subject matter may, in fact, be an inherent characteristic of the prior art, it possesses the authority to require the applicant to prove that the subject matter shown to be in the prior art does not possess the characteristic relied upon. *In re Best*, 562 F.2d 1252, 195 USPQ 430, 433 (CCPA 1977). Accordingly, the burden is placed upon the applicant to prove that such movement of said pedal lever is not an inherent characteristic of the reference combination.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patent documents are cited to further show the state of the art regarding adjustable pedals in general:

US Patent No. 6,082,219 to Wolpert

UK Patent Application GB 2 055 180 A

US Patent No. 5,996,438 to Elton

European Patent Application EP 0 062 268 A1

US Patent No. 5,916,330 to Jacobson

German Patent Application DE 31 07 918 A1


US Patent No. 3,721,309 to Donaldson

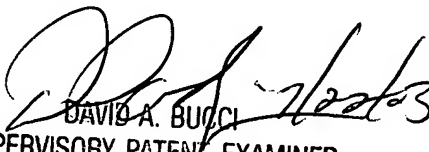
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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy P McAnulty whose telephone number is 703.308.8684. The examiner can normally be reached on Monday-Friday (7:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on 703.308.3668. The fax phone numbers for the organization where this application or proceeding is assigned are 703.872.9326 for regular communications and 703.872.9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

tpm 
July 21, 2003


DAVID A. BUCCI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600